THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

W.P.M.P.NO.12510 OF 2005

IN

WRIT PETITION NO : 12510 of 2001

TUESDAY, THE EIGHTEENTHDAY OF OCTOBER
TWO THOUSAND AND FIVE

Between:

1 M/s. Shanti Constructions, a registered Partnership Firm, Situated at

5-8-610, Abids, Hyderabad.
Rep. by its Partner Sri Giriraj Charan, S/o. Sri Mahaveer Pershad and

others.

..... PETITIONERS

AND

1 The Municipal Corporation of Hyderabad Rep. by its Commissioner
Tank Bund Road, Hyderabad. And others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

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WRIT PETITION NO : 12510 of 2001

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(On being mentioned)

O R D E R:

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The petitioners herein are the construction companies registered as partnership firms represented by their respective partners.

In the affidavit filed in support of the writ petition it is stated that the property in question is situated on a hillock bearing No.8-2-411, Road No.6, Banjara Hills, Hyderabad. The said property originally belonged to Smt. Lateef Jehan Begum and others, who under various registered sale Deeds sold their respective shares to the partners of the 1st petitioner firm. The 1st petitioner firm has entered into a development Memorandum of Understanding with the 2nd petitioner for developing and taking up construction on the said property. The original owner Smt. Lateef Jehan Begum and others had surrendered 674 sq. yards of their property for road widening in favour of the respondent-corporation, without claiming any compensation and in lieu thereof, she had requested for relaxation of zoning regulations at the aforesaid premises. Accordingly, she applied for building permission to the 1st respondent-Municipal Corporation Hyderabad and had also applied to the Government for relaxation. The Government in Memo No.29404/M1/95-4 MA dated 26-05-1998, accorded permission directing the 1st respondent- Commissioner, to calculate the amount payable as above by indicating the relaxations to the front, rear and side open spaces as well as the height of the building and the additional FSI agreed to be granted in the aforesaid order of the Government. After submitting the revised plan and on payment of Rs.6,60,386/- to the cost of the land of 677.11 sq. yards affected in the road widening, the

1st respondent has granted permission to the petitioners under permit No.160/52/2000 vide file No.50/TP5/2000 dated 20-09-2000 by granting permission for construction of stilt + 3 upper floors in 2 separate blocks. The said sanction is in agreement with the government in Memo No.29404/M1/95/MA dated 24-8-1999 which confirms the earlier memo referred to above. Thereafter, the petitioners taken up construction work in accordance with the said sanctioned plan. At that time, the petitioners noticed that the ramp to be provided for the stilt parking under the rear block was of a very high gradient of almost 10 meters level difference from the road and to avoid blasting of rock and other technical difficulties, instead of providing 2 separate stilt parking in each block, the petitioner have provided 2 stilt parking in front block itself. It is further submitted that the sanctioned plan and the construction taken up thereon are therefore, do not exceed any of the zoning regulations, byelaws nor there is any violation of permissible F.S.I or F.A.R or coverage and that the total F.S.I and permission available for petitioners is 54,000 sft. As per the zoning regulations and building byelaws whereas the actual FSI consumed as per the sanctioned plan is only about 40,000 sft. Therefore, it clearly establishes that the FSI or FAR is not violated in any manner, on account of providing of 2 stilt parkings in front block in stead of separate stilt parking in the front and the rear side blocks. Similarly, neither the height restriction nor any other regulations are violated. While so, it is the case of the petitioners that they were served with a notice No.32

dated 20-06-2001 under Section 452 of the Hyderabad Municipal Corporation Act (for short 'the Act') calling upon their explanation within three days from the date of receipt of the notice as to why the building or such portion of the building or work or such portion of the building as is found contrary to the sanctioned plan should not be removed so as to bring in conformity with the sanctioned plan. Pursuant to the said notice, the petitioners submitted their explanation stating that there is absolutely no violation whatsoever and all the observation mentioned in the notice is incorrect and non-existent. It is further submitted in the explanation dated 21-06-2001 that the property is almost standing on a hillock and constructions thereon do not cause any inconvenience or injury to public or to any other person. The conduct of the respondents is evident in similar cases whereunder they have given 24 hours notice for demolition etc., The grievance of the petitioners is that the respondents would resort to similar drastic action in their case also though there are neither any violations nor thee is anything warranting for such drastic action. Hence the present writ petition.

A counter affidavit has been filed by the respondents. It is stated in the counter that after

obtaining orders from the Government in memo dated 26-05-1998 the 1st respondent-Corporation granted permission to the petitioners for construction of two combined blocks with stilt for parking plus upper 3 floors for residential purpose vide permit No.160/52 dated 20-09-2000 keeping in mind the levels of the two block one at road level and the other at higher level. But the claim of the petitioners is that in view of the rocky area of the land, they need provision for parking in only one block i.e., the block abutting to road level. By suppressing the said fact, the petitioners converted ground floor into parking and raised extra floor over the permitted stilt plus 3 upper floors, which naturally increases the respondent of building over and above relaxation 2.39 mts granted by the Government. Therefore, the maximum height permitted is 12.39 mts. Though the normal permissible height in this area is only 10.00mts as per the provision made zoning regulations vide G.O.Ms.No.423, MA dated

31-07-1998. Thus the height of the building increased amounts to 2.61 mts (15-00-12.39 mts). This naturally violated not only height but also FSI and coverage. Though the petitioners claim that they have consumed only 40,00 sq.ft. the coverage consume exceeds the permissible limit of coverage at site. It is further submitted that the petitioners failed to intimate the commencement of work and they should strictly construct the building as per the plan approved by the respondent-corporation and thereby they violated the conditions made under the Act and building byelaws and conditions enumerated thereon. The case of the respondents is that the hearing part of the notice arises only after the petitioners submit their explanation. Since the time given under notice expires on Sunday (Public Holiday) the petitioners can submit their explanation even on Monday. But the petitioners without filing their explanation to the show cause notice, they straight away approached this Court. Therefore, the writ petition is liable to be dismissed.

Heard.

It is the case of the petitioners that the show cause

dated 20-06-2001 was served on them on 21-06-2001 at 2.00 p.m. The petitioners apprehend that as the time for submitting the explanation expires on a Sunday which is a public holiday, the respondents may resort to drastic action of demolition or otherwise on the following Monday whereby they would be deprived of any opportunity to redress their grievance, they approached this Court.

Since the explanation dated 21-06-2001 to the show cause notice dated 20-06-2001 issued under Section 452 of the Act is pending before the 1st respondent for consideration, I am not inclined to express any opinion on the merits of the case. Instead, I deem it appropriate to

dispose of the writ petition with a direction to the 1st respondent-Commissioner, Municipal Corporation of Hyderabad, to consider the explanation dated 21-06-2001 submitted by the petitioners and pass appropriate orders in accordance with law as expeditiously as possible preferably within a period of eight weeks from the date of receipt of a copy of the order, after giving opportunity to the parties. Till such time, the respondents are directed not to demolish the existing structures in the property in question.

With the above direction, the writ petition is disposed of. No costs.

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18-10-2005

MjI/*